

Amendment No. 4 to HB8001

Hazlewood
Signature of Sponsor

AMEND Senate Bill No. 8001

House Bill No. 8001*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 64, is amended by adding the following as a new chapter:

64-9-101. Short title.

This chapter is known and may be cited as the "Megasite Authority of West Tennessee Act of 2021."

64-9-102. Creation; policy and intent.

(a) There is established a regional development authority, administratively attached to the department of general services, known as the "Megasite Authority of West Tennessee."

(b) It is the intent of the general assembly by the passage of this chapter to promote economic development at or within the megasite, to generate high quality jobs at the megasite, in the surrounding areas, and in this state, and to encourage and promote development of manufacturing, warehouse, distribution, office, restaurant, retail, hotel, motel, communications systems, recycling, utilities, educational institutions, workforce housing, financial and recreational activities, other similar uses, and customary uses accessory or ancillary to such promotion; to establish the authority for the purposes of developing, incentivizing, operating, managing, and promoting the megasite; and to vest the authority with all powers that may be necessary to or consistent with accomplishing such purposes.

(c) Title 64, chapter 6, does not apply to the megasite.

64-9-103. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Authority" means the Megasite Authority of West Tennessee;

(2) "Board" means the authority's board of directors;

(3) "Initial megasite property" means the property spanning parts of Haywood County and Fayette County and depicted on the survey prepared by Barron Surveying & Mapping, LLC, Job No. 21-198, dated August 31, 2021, for the department of general services;

(4) "Megasite" and "megasite of West Tennessee" mean the initial megasite property, less all parcels of land conveyed in fee simple to private entities from time to time;

(5) "Permitted use" means a use determined by the authority to be consistent with or functionally related to the purposes set forth in this chapter;

(6) "Project":

(A) Means any or all of the following, whether or not now in existence, as determined by the authority to be consistent with the purposes set forth in this chapter:

(i) All, any part of, or any interest in, land included within the megasite; and

(ii) Any building, facility, structure, or other improvement on, through, over, or under the megasite; and

(B) Notwithstanding subdivision (6)(A), "project" does not include a college of applied technology established on the megasite in accordance with title 49, chapter 11, part 4;

(7) "Wastewater system" means the real and personal property owned by this state and utilized as a wastewater facility for the purposes of this chapter to serve the initial megasite property, including collection and transmission systems,

treatment plants, and reuse or disposal systems, including, but not limited to, plants, pumps, pumping stations, pipes, treatment systems, and related easements, but excluding a service line or other infrastructure located within the boundary of property leased by the authority to a third party or owned by a third party; and

(8) "Water system" means the real and personal property owned by this state and utilized for the collection, treatment, storage, and distribution of water for the purposes of this chapter to serve the initial megasite property including, but not limited to, plants, pipes, tanks, pumps, meters, storage tanks, and related easements, but excluding a service line or other infrastructure located on a customer's side of a water meter that measures service to the customer.

64-9-104. Powers.

(a) The authority is vested with all powers necessary for and consistent with accomplishing the purposes of this chapter, including, but not limited to, the power to:

(1) Adopt, amend, and repeal bylaws;

(2) Execute contracts;

(3) Subject to the approval of the commissioner of general services, employ individuals and create, combine, consolidate, or abolish divisions within the authority as the board deems necessary for the transaction of the authority's business;

(4) Retain third-party contractors and agents as the board deems necessary for the transaction of the authority's business and require or waive the bond of a contractor or agent as the board may deem appropriate. The engagement of outside legal counsel must comply with § 8-6-106;

(5) Enforce compliance with this chapter and the rules, policies, or land use regulations adopted pursuant to this chapter in a court of competent jurisdiction and seek any remedy available under applicable law or in equity;

(6) Own, acquire, purchase, option, convey, exchange, donate, sell, gift, rent, lease, improve, maintain, operate, and equip real and personal property, without the need for separate approval from another state agency, board, or commission, notwithstanding the requirements contained in § 12-2-112. These powers include, but are not limited to, the power to:

(A) Acquire, whether by purchase, exchange, gift, lease, or otherwise, and develop, improve, maintain, equip, and furnish one (1) or more projects, including, but not limited to, all real and personal property that the board may deem necessary in connection with the projects, regardless of whether or not such projects are then in existence;

(B) Lease to others one (1) or more projects and, in the board's sole discretion, establish, charge, waive, and collect rent for the projects, and execute amendments to such leases, which amendments, among other things, may provide for extending the terms of such leases, amending or extending payments in lieu of taxes due under the leases, and amending or extending rents or other payments due under the leases, together with all other terms and conditions as the board may deem advisable. The authority may include in a lease or amendment an option for the lessee to purchase all or a portion of the project with or without consideration;

(C) Sell to others one (1) or more projects for such payments and upon such terms and conditions as the board may deem advisable;

(D) Develop, improve, and maintain the grounds within the megasite, including, but not limited to, construction and maintenance of roads and buildings, utilities, signage, trash removal, vegetation control, and landscaping;

(E) Grant mortgages, deeds of trust, easements, or other encumbrances on all or a part of the megasite, including, but not limited to, subordinating this state's ownership interest in all or a part of the megasite; and

(F) Have exclusive control of and responsibility for the administration of properties and facilities constructed or acquired pursuant to this chapter, except as otherwise expressly provided in this chapter and except as applied to a college of applied technology established on the megasite in accordance with title 49, chapter 11, part 4;

(7) Accept and distribute grants and other incentives to induce projects to locate at or expand operations at the megasite or otherwise to further the purposes of this chapter;

(8) Have the exclusive authority to regulate land use, including the subdivision of property, located within the megasite;

(9) Enter into agreements with lessees of real and personal property located at the megasite regarding payments in lieu of ad valorem taxes and, at the authority's discretion, direct a lessee to make such payments in lieu of taxes directly to a municipality or county. A payment in lieu of taxes under such an agreement becomes and remains a first lien upon the fee interest in the leased property from January 1 of the year in which such payment in lieu of taxes is due. The authority and a municipality or county intended to receive such payment in lieu of taxes may each enforce such lien and obtain interest at ten percent (10%) per annum from the date due and reasonable attorneys' fees, by suit filed in a court of competent jurisdiction;

(10) Enter into agreements with local governments pursuant to title 12, chapter 9, regarding the provisions of governmental services to the megasite and

the distribution to local governments of payments in lieu of ad valorem property taxes;

(11) Offer and provide water and wastewater services to customers located on the initial megasite property, together with all actions necessary or incidental to the provision of water and wastewater services, including the power to:

(A) Plan, establish, develop, investigate, study, acquire, purchase, construct, equip, improve, repair, extend, maintain, and operate a water system or wastewater system within or outside the megasite boundary to serve the initial megasite property;

(B) Buy, collect, store, process, treat, sell, transfer, dispose of, and distribute water and wastewater from, with, or to a county, municipality, utility district, this state or an agency thereof, the United States or an agency thereof, or a person, whether public or private;

(C) Acquire and own each type of property, franchise, or asset, whether real, personal, or mixed, tangible or intangible, whether located within or without the boundaries of the initial megasite property, and sell, lease, exchange, or convey properties, facilities, and services for the purpose of operating a water system or wastewater system;

(D) Establish and charge rates and set terms and conditions of service for the use of the water system or wastewater system and the sale of materials or commodities by the authority;

(E) Use a right-of-way, easement, or other similar property right held by this state or a political subdivision of this state that is necessary or convenient in connection with a water system or wastewater system; provided, that this state or the political subdivision consents to such use;

(F) Sell or otherwise dispose of all or a part of a water system or wastewater system;

(G) Adopt and enforce a pretreatment program, as that term is defined in § 69-3-103, pursuant to and in compliance with the provisions of title 69, chapter 3, part 1, and rules promulgated by the board of water quality, oil, and gas; and

(H) Operate a public water system, as that term is defined in § 68-221-703, pursuant to and in compliance with title 68, chapter 221, part 7, and rules promulgated by the board of water quality, oil, and gas;

(12) Condemn land, a right in land, an easement, or a right-of-way as the board deems necessary for effectuating the purposes of this chapter, whether or not the condemned property interest is owned or held for public use by a person or persons having the power of eminent domain or otherwise held or used for public purposes. Condemnation by the authority must not interfere with a prior public use of the property interest that is being condemned. The power conferred in this subdivision (a)(12) may be exercised pursuant to any applicable statutory provision, now in force or later enacted, for the exercise of the power of eminent domain;

(13) Do and perform each and every act and thing and have and exercise each and every power that the board, in the board's sole discretion, deems necessary, convenient, or appropriate, to accomplish the purposes of this chapter. The inclusion of a specific power in this chapter does not limit the broad general powers granted to the authority. The exercise of the authority's powers, including, but not limited to, the powers with respect to the disposition, development, encumbrance, lease, sublease, or improvement of state property, are exclusive and are not subject to further approval, except as expressly provided in this chapter; and

(14) Promulgate rules in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The board may, in the board's sole discretion, require that a board action be accomplished by rule. Otherwise, a board action may be accomplished by majority vote of the entire membership of the board.

(b) Except as otherwise expressly provided in this chapter, and notwithstanding title 4, chapter 15, part 1, or any other law to the contrary, the powers of the authority are exclusively vested in the authority.

64-9-105. Board of directors.

(a) The authority is governed by a board of directors. The board consists of eleven (11) voting members as follows:

- (1) Two (2) members to be appointed by the governor;
- (2) Two (2) members to be appointed by the speaker of the house of representatives;
- (3) Two (2) members to be appointed by the speaker of the senate;
- (4) One (1) member to be appointed jointly by the speaker of the senate and the speaker of the house of representatives;
- (5) The governor, ex officio;
- (6) The commissioner of economic and community development, ex officio, or the commissioner's designee;
- (7) The commissioner of finance and administration, ex officio, or the commissioner's designee; and
- (8) The commissioner of general services, ex officio, or the commissioner's designee.

(b) The term for a board member who does not serve ex officio is four (4) years. A board member who does not serve ex officio is eligible for reappointment and may serve a maximum of two (2) full terms; provided, however, that an appointment to fill an

unexpired term as a result of a vacancy does not constitute a full term. At the expiration of a board member's term, the member may continue to serve until a successor is appointed or until the member is reappointed.

(c) The terms for the initial board members who do not serve ex officio begin on November 1, 2021.

(d) Six (6) board members constitute a quorum for the transaction of business. If a quorum is present, a vacancy on the board does not prevent the board from transacting business or otherwise taking an action authorized pursuant to this chapter.

(e) The governor shall appoint a member of the board to serve as chair at the pleasure of the governor. The board may elect other officers as the board may deem appropriate.

(f) The board shall meet at the call of the chair.

(g) An ex officio board member shall not receive compensation for service as a board member, except that an ex officio board member, other than the governor, must be reimbursed for travel expenses incurred in the performance of the board member's official duties. Appointed board members receive two thousand dollars (\$2,000) per month for the first three (3) years of the authority's existence, plus reimbursement for travel expenses incurred in the performance of the board member's official duties. After the first three (3) years of the authority's existence, an appointed board member shall only receive reimbursement for travel expenses for service as a board member. All reimbursement for travel expenses must be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

(h) A board member who is not an ex officio member and who is absent from three (3) consecutive meetings may be removed from the board by the governor, the appointing authority, or by majority vote of the entire membership of the board. The

appointing authority may remove a board member appointed by that appointing authority for cause.

(i) All board meetings must comply with the open meetings provisions compiled in title 8, chapter 44.

(j) Each appointed member of the board shall disclose conflicts of interest in accordance with title 8, chapter 50, part 5.

64-9-106. Chief executive officer.

There is established the office of the chief executive officer of the authority. The first chief executive officer must be appointed by the governor. Thereafter, each subsequent chief executive officer must be appointed by the board. All chief executive officers serve at the pleasure of the board. For each chief executive officer, including the first chief executive officer, the board shall enter into a contract with the chief executive officer establishing the chief executive officer's salary. All reimbursement for the chief executive officer's travel expenses must be in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter.

64-9-107. Water and wastewater services.

(a) The authority shall prescribe and collect non-discriminatory, just, and reasonable rates, and set terms and conditions of service to customers of a water system or wastewater system operated by the authority.

(b) Notwithstanding any other law to the contrary, and for as long as the water system is owned or controlled by the authority or this state, the authority has the obligation and exclusive right to provide water service to customers located on the initial megasite property. Notwithstanding any other law to the contrary, and for so long as the wastewater system is owned or controlled by the authority or this state, the authority has the obligation and exclusive right to provide wastewater service to customers located on the initial megasite property. In exercising that obligation and right, the authority may, in

the authority's sole discretion, enter into an agreement with a third party for the third party to provide either water service or wastewater service, or both.

(c) The Tennessee public utility commission, utility management review board, water and wastewater financing board, or other board or commission of like character hereafter created does not have jurisdiction over the authority in the management and control of the authority's water system or wastewater system, including, but not limited to, the regulation of the authority's rates or terms and conditions of service, except to the extent provided by this chapter; provided, however, that the authority is subject to regulation by the department of environment and conservation.

(d) The authority shall not operate a water system or wastewater system at a deficit after December 31, 2026.

64-9-108. Building construction, plans review, permitting and inspections.

(a) The state fire marshal has exclusive jurisdiction over all plans review, permitting, and inspections for, and enforcement of, standards designed to afford a reasonable degree of safety to life and property from fire and hazards for all constructed, altered, or repaired buildings or structures at the megasite, including all electrical installations, plumbing systems, fire protection systems, and mechanical systems for all such buildings and structures. The fire safety, electrical, and building construction safety standards established pursuant to §§ 68-102-113, 68-102-143, and 68-120-101 apply to all buildings or structures at the megasite. The state fire marshal is the sole authority with jurisdiction regarding, and may approve, equivalencies or variances from applicable code requirements for constructed, altered, or repaired buildings or structures located at the megasite including electrical installations, plumbing systems, fire protection systems and mechanical systems for such buildings or structures at the megasite.

(b) This section must not be construed to limit the authority of the board of boiler rules, the elevator and amusement device safety board, or the commissioner of labor and workforce development.

64-9-109. Zoning and subdivision.

(a) The property within the megasite is not subject to local land use regulations. The property within the megasite must only be used for one (1) or more permitted uses. The authority shall not permit within the megasite a use that the authority deems noxious; provided, that recycling batteries or other materials used or associated with the operation of a project must not be deemed inherently noxious and may be permitted by the authority.

(b) Prior to constructing improvements to the property within the megasite, a site plan for the proposed improvements must be approved by the authority. The authority may impose reasonable setbacks, parking and loading requirements, height limitations, landscaping and buffering requirements, screening requirements, limitations on storage of materials, stormwater quantity and quality requirements, and other requirements consistent with the purposes set forth in this chapter.

(c) Any subdivision of property within the megasite for the purpose of sale or building development must be approved by the authority prior to recording the subdivision. Approval by a regional, county, or municipal planning commission is not required. A conveyance of a portion of the property within the megasite in violation of this section is void.

(d) The transfer of fee title of property or a portion thereof within the megasite by this state constitutes a change in zoning for the purposes of § 13-7-208(b)-(d).

(e) A use or improvement of property approved by the authority pursuant to this section does not constitute a nuisance to adjoining landowners for the purposes of § 13-7-208(c)-(d).

(f)

(1) With respect to a person who violates a land use regulation adopted or established pursuant to this section, the authority may assess a civil penalty of not less than fifty dollars (\$50.00) nor more than five thousand dollars (\$5,000)

per violation for each day of the continued violation. The authority shall provide each adverse party not less than ten (10) days' written notice prior to assessing a penalty under this subdivision (f)(1).

(2) In assessing a civil penalty, the authority may consider the following factors:

(A) The harm to public health or safety or to the environment;

(B) Whether the civil penalty imposed will be a substantial economic deterrent to future violations;

(C) The economic benefit gained by the violator;

(D) The violator's effort to remedy the violation;

(E) Unusual or extraordinary enforcement costs incurred by the authority;

(F) The amount of a penalty established by a board resolution for specific categories of violations; and

(G) The equities of the situation that outweigh the benefit of imposing a penalty.

(3)

(A) A person who is assessed a civil penalty may secure a review of such order by filing a petition with the authority not more than ten (10) business days after the levy of the civil penalty, setting forth the grounds and reasons for such person's objections and asking for a hearing in the matter involved before the board.

(B) If a person files a timely petition for review of a penalty under subdivision (f)(3)(A), the board shall grant the petitioner forty-five (45) days to provide proof satisfactory to the board that the petitioner cured, remediated, mitigated, or took other corrective action to resolve the circumstances that were the basis of the penalty. After the forty-five-day

period has tolled, the board shall consider the actions of the petitioner and issue a final order upholding the initial civil penalty, reducing the civil penalty, or vacating the civil penalty.

(C) A party aggrieved by an order of the board under subdivision (f)(3)(B) may file an appeal of the decision with the board not later than ten (10) business days after the decision is final.

(D)

(i) An appeal filed under subdivision (f)(3)(C) must be conducted as a contested case and must be heard before an administrative judge sitting alone pursuant to §§ 4-5-301(a)(2) and 4-5-314(b), unless settled by the parties.

(ii) The administrative judge to whom the case has been assigned shall convene the parties for a scheduling conference within thirty (30) days of the date the appeal is filed.

(iii) The scheduling order for the contested case issued by the administrative judge must establish a schedule that results in a hearing being completed within sixty (60) days of the scheduling conference, unless the parties agree to a longer time or the administrative judge allows otherwise for good cause shown.

(iv) An initial order must be issued within thirty (30) days of completion of the hearing. The administrative judge's initial order, together with earlier orders, if any, issued by the administrative judge, become final pursuant to § 4-5-315, unless appealed to the chancery court of Madison County not less than ten (10) business days after the issuance of the order in accordance with § 4-5-322.

(4) If a petition for review of a civil penalty is not filed with the authority within ten (10) days after the civil penalty is served in a manner authorized by

law, then the violator is deemed to have consented to the civil penalty, which consent becomes final.

(5) Whenever a civil penalty becomes final because of a person's failure to appeal the civil penalty, the authority may apply to the chancery court of Madison County for a judgment and seek execution of such judgment. The court, in such proceedings, shall treat the failure to appeal such civil penalty as a confession of judgment.

64-9-110. Lessee's construction of projects.

(a) The state's property interest in the megasite is not subject to a lien recorded pursuant to title 66, chapter 11.

(b) A lease between the authority and a third-party lessee for land within the megasite must provide that, in the event that a lien is filed against the third-party lessee's leasehold interest pursuant to title 66, chapter 11, the third-party lessee must record a bond in accordance with § 66-11-142 no later than thirty (30) days after the earlier of the date the third-party lessee receives notice of the claim of lien or the date the lien is recorded.

(c) Notwithstanding any other law to the contrary, a third-party lessee is not an agent of the authority or this state for purposes of § 66-11-102(d).

(d) Notwithstanding any other law to the contrary, the authority and a third-party lessee are not required to comply with § 66-11-142 for construction activities undertaken by the third-party lessee pursuant to a lease between the authority and the third-party lessee.

64-9-111. Relation to existing laws; construction.

(a) The powers conferred on the authority by this chapter are in addition and supplementary to the powers conferred on the authority by other law. Projects undertaken by an entity other than this state are not deemed to be an undertaking of a Tennessee governmental entity.

(b) This chapter must be liberally construed to effectuate its purposes.

64-9-112. State building commission.

Notwithstanding § 64-9-104(a)(6), a lease of real property, and all amendments thereto, entered into by the authority, and all capital grants and corresponding accountability agreements are subject to approval by the state building commission pursuant to title 4, chapter 15, part 1. An improvement to be constructed by a third party; a sublease by a third party; or a consent, approval, contract, or other action taken by the authority or a lessee pursuant to a lease previously approved by the state building commission is not subject to additional approval by the state building commission. This chapter does not affect other requirements of the Tennessee board of regents necessary to obtain an otherwise required approval from the state building commission relating to a college of applied technology established on the megasite in accordance with title 49, chapter 11, part 4.

64-9-113. Authority records.

(a) The authority adopts as its official policy the principle of open records and, unless otherwise provided by this section or other applicable law, the information and documents maintained, received, or produced by the authority are public records, as that term is defined in § 10-7-503.

(b) A binding contract or agreement entered into or signed by the authority that obligates public funds, together with all supporting records and documentation, is not a public record until the contract or agreement is entered into or signed.

(c) A public record, including proprietary information, received, produced, or maintained by the authority is confidential for a period of five (5) years if the chief executive officer, with the affirmative agreement of the attorney general and reporter, determines that the record is of such a sensitive nature that the record's disclosure or release would seriously harm the ability of the authority to effectuate the purposes of this chapter. After five (5) years from the date the confidentiality determination is made, the

record made confidential by this subsection (c) becomes a public record and is open for public inspection in accordance with § 10-7-503.

(d) All trade secrets received, maintained, or produced by the authority must remain confidential.

(e) As used in this section, unless the context otherwise requires:

(1) "Proprietary information" means commercial or financial information that is used either directly or indirectly in the business of a person submitting information to the authority, and that gives such person an advantage or an opportunity to obtain an advantage over competitors who do not know or use such information; and

(2) "Trade secrets" means manufacturing processes, materials used in manufacturing processes, and costs associated with the manufacturing process of a person submitting information to the authority.

(f)

(1) This section does not apply to records containing marketing information or capital plans that are provided to the authority with the understanding that the records are now and should remain confidential. Any such record must remain confidential until such time as the provider thereof no longer requires the record's confidentiality.

(2) As used in subdivision (f)(1), unless the context otherwise requires:

(A) "Capital plans" mean plans, feasibility studies, and similar research and information that will contribute to the identification of future business sites and capital investments; and

(B) "Marketing information" means marketing studies, marketing analyses, and similar research and information designed to identify potential customers and business relationships.

SECTION 2. Tennessee Code Annotated, Section 64-6-101, is amended by adding the following as a new subsection:

() This chapter does not apply to the Megasite of West Tennessee created pursuant to title 64, chapter 9.

SECTION 3. Tennessee Code Annotated, Section 4-29-243(a)(27), is amended by deleting the subdivision.

SECTION 4. Tennessee Code Annotated, Section 4-29-244(a), is amended by adding the following as a new subdivision:

() Megasite Authority of West Tennessee, created by § 64-9-102;

SECTION 5. Tennessee Code Annotated, Section 64-6-111, is amended by deleting the section.

SECTION 6. Tennessee Code Annotated, Section 10-7-504, is amended by adding the following as a new subsection:

() The records of the Megasite Authority of West Tennessee, created pursuant to title 64, chapter 9, are open to public inspection subject to § 64-9-113.

SECTION 7. Tennessee Code Annotated, Section 67-5-502(c), is amended by deleting the language "a local government" in the first sentence and substituting "this state or a local government, or instrumentality thereof,".

SECTION 8. Tennessee Code Annotated, Section 67-5-502(c), is amended by inserting the language "this state or" before the language "a local government" in the second sentence.

SECTION 9. Tennessee Code Annotated, Section 67-5-502(d), is amended by inserting the language "this state or" before the language "a local government".

SECTION 10. The commissioner of general services may exercise all powers granted to the authority pursuant to this act from the effective date of this act until the date on which the board of directors assumes active control of the Megasite Authority of West Tennessee by resolution.

SECTION 11. Notwithstanding Tennessee Code Annotated, Section 4-29-112, the Memphis Regional Megasite Authority, created by Tennessee Code Annotated, Section 64-6-101, terminates and ceases to exist.

SECTION 12. If a provision of this act or its application to a person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 13. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in a compilation or publication containing this act.

SECTION 14. This act takes effect upon becoming a law, the public welfare requiring it.